**Remarks:**

**A. The examiner rejected Claim 4-8 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated that in claim 4 the phrase "is capable of" is vague and ambiguous. Similarly in claim 5 the phrase "being operative for" is vague and ambiguous. The Examiner stated that corrections were required. In claims 5-8, the Examiner stated that it is not clear if the term "system" refers to a "method" or an "apparatus". He stated that clarification was required.**

Applicant amended Claim 4 to include the text of Claim 1 instead of just referring to Claim 1. Applicant submits that Claim 4 does comply with 35 U.S.C. 112, second paragraph and request that the examiner withdraw this rejection. It is believed that this claim amendment does not add new matter to this application.

Applicant amended Claim 5 line 9 to delete "being operative". Applicant submits that Claim 5 does comply with 35 U.S.C. 112, second paragraph and requests that the examiner withdraw this rejection. It is believed that this claim amendment does not add new matter to this application.

In Claims 5-8 "system" refers to an apparatus. The elements of the system are: "an input device", "a memory", "an automated data processor", and "an output device" which are all structural parts. If it were a method claim the elements would be acts or manipulative steps that are performed upon an article, workpiece, or chemical substance. Applicant submits that Claims 5-8 do comply with 35 U.S.C. 112, second paragraph and requests that the examiner withdraw this rejection. It is believed that this does not add new matter to this application.

**B. Claim Rejections - 35 USC § 103: Claim Rejections - 35 USC § 103: Claims 1 and 3-7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kane (US Patent 6,317,728 Bl) in view of Gutterman et al (US Patent 5,297,031).**

**The examiner stated that with reference to claims 1, 4 and 5, Kane teaches a method and system for providing downside protection of stock market investments for managing an investment portfolio by an automated data processing system having a memory with an input device connected with the automated data processing system, the method comprising the steps of entering a name of a security into the automated data**

**processing system through the input device (See Kane Column 1 lines 4-14); storing the name of the security in the memory (See Kane Column 1 lines 4-14); entering a buy price of the security into the automated data processing system through the input device (See Kane Column 1 lines 4-14); storing the buy price of the security in the memory as the high value (See Kane Column 1 lines 4-14); linking the automated data processing system by a data link to current stock information (See Kane Column 2 lines 31-34); reading a market price of the security from the current stock information (See Kane Column 2 lines 31-34); comparing the market price of the security to the high value (See Kane Column 2 lines 31-34); comparing the sell threshold price to the market price, and executing a sell event when the market price is below the sell threshold price (See Kane Column 2 lines 31-34) and repeating the linking steps until the sell event occurs (See Kane Column 2 lines 46-50). A computer-readable medium having imprinted therein a computer program containing instruction steps such that upon installation of the computer program in a general-purpose computer for performing the method above is inherent in the disclosure of Kane.**

The Examiner refers to Kane Column 1 lines 4-14; Column 2 lines 31-34; and Column 2 lines 46-50. In order to fully understand these references in the context of the reference, Kane Column 1 lines 4-17 and Kane Column 2 lines 28-50 are quoted below with emphasis added by Applicant.

Kane Column 1 lines 4-17 states:

> The invention relates to a securities (the term "securities" is in the following to be understood to include "securities and/or commodities") and/or commodities trading system that includes a *computer arrangement communicating with a securities exchange*, and *has inputs for receiving buy and sell data*. The computer arrangement is *capable of evaluating the buy/sell data and issuing buy/sell orders in accordance with a plurality of buy/sell rules, i.e. "agents," stored in the system*. A feedback arrangement monitors the success and failure of the respective buy/sell agents and assigns rating powers, i.e. weightings, to the buy/sell agents in order to implement a learning process for gradually improving the system performance based on past and continuously accumulating experience of the agents.

This Kane reference defines "securities" and briefly explains the data processing involved in Kane's solution. Kane teaches artificial intelligence provided by decision agents as stated in the Kane Abstract. Kane Column 1 lines 4-17 does not allude to downside protection, but describes how the Kane solution only offers an evaluating and issuing functionality based on a set of (i.e., more than one) user-defined business rule ("agents"). The Kane solution can then be used to track agents performance while at the same time continue to execute existing strategies. Storing the name of the security and its buy price may be alluded to within Kane,

Column 1, lines 4-14; however, storing the buy price of the security as the high value should not be assumed from this section.

Kane Column 2 lines 28-50 states:

> More importantly, brokerage firms do not let one place sell and stop orders on the same shares. That is to say, *one can either try to protect oneself with stop loss orders, or one can try to profit with sell orders, but one cannot do both.* The system effectively lets one do both by monitoring stocks continuously.
> The system enables a person to make money while on vacation. It does the drudge work of monitoring the market. It may be arranged to send alphanumeric trade reports to a user by cellular phone or pager.
> Use of margin can increase one's earning power. With margin the system may deliver a return each month. But margin costs money. It is a loan against one's current stock holdings, allowing one to buy more stock. If one holds the stock for days, weeks or months, one pays margin interest even if the stock price loses ground. By actively trading, one incurs a fraction of the margin costs, and may not incur any at all, since one is borrowing and returning the same day.
> The system will also let one hold stocks with pre-set buy, sell and dump prices, allowing one to automate transactions, get pager notifications and view continuously updated prices while supporting existing strategies.

Kane, Column 2, lines 31-34 only states that the Kane solution will provide stop loss orders to prevent dilution (downside) and sell orders for profit opportunities (upside); and states, "The system enables a person to make money while investors are on vacation." This reference does not specify 'how.' Instead this reference only teaches using a plurality of buy/sell rules "agents" stored in the system. The Examiner's statements regarding Kane teaching: 1) linking the automated data processing system by a data link to current stock information (See Kane Column 2 lines 31-34); 2) reading a market price of the security from the current stock information (See Kane Column 2 lines 31-34); 3) comparing the market price of the security to the high value (See Kane Column 2 lines 31-34); 4) comparing the sell threshold price to the market price, and 5) executing a sell event when the market price is below the sell threshold price (See Kane Column 2 lines 31-34) are not well taken. The Applicant believes the steps of comparing the market price of the security to the high value (See Kane Column 2 lines 31-34); comparing the sell threshold price to the market price, and executing a sell event when the market price is below the sell threshold price (See Kane Column 2 lines 31-34) are not stated or specified in the reference. The disclosure does not teach these steps. The assumption that this reference implies these steps is not believed by

the Applicant to be obvious to one having ordinary skill in the art at the time the invention was made. Therefore the Applicant request that the examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding as per 37 CFR 1.104(d)(2).

**The Examiner further stated that Kane does not explicitly teach a trailing stop loss order processing which includes the steps of entering a stop loss percentage for the security into the automated data processing system through the input device, storing the stop loss percentage for the security in the memory, when the market price of the security exceeds the high value, setting the high value equal to the market price of the security to generate a new high value, storing the new high value for the security in memory as the high value, multiplying the stop loss percentage by the high value and subtracting the resulting product from the high value to generate a sell threshold price, and repeating the steps of setting new high value through generating a sell threshold price till the sell event occurs.**

**The Examiner stated that Gutterman teaches a trailing stop loss order which includes the steps of entering a stop loss percentage for the security into the automated data processing system through the input device, storing the stop loss percentage for the security in the memory, when the market price of the security exceeds the high value, setting the high value equal to the market price of the security to generate a new high value, storing the new high value for the security in memory as the high value, multiplying the stop loss percentage by the high value and subtracting the resulting product from the high value to generate a sell threshold price, and repeating the steps of setting new high value through generating a sell threshold price till the sell event occurs (See Gutterman Column 4 lines 1-5).**

**The Examiner also stated that both Kane and Gutterman are concerned with managing trading of securities for customers. It would have been obvious to one with ordinary skill in the art at the time of the current invention to include the teaching of Gutterman to the invention of Kane. The combination of the disclosures taken as a whole suggests that customers would have benefited from being able to gain as much as possible from a major move upward move while making certain that they can probably lose back only a little of the gain.**

The Examiner refers to Gutterman Column 4 lines 1-5. In order to better understand these references in the context of the reference, Gutterman Column 3 line 62- Column 4 line 13 are quoted below with emphasis added by Applicant.

Gutterman Column 3 line 62- Column 4 line 13 states:

> A "sell stop order" instructs a broker to execute an order when the price falls to a given level, at which point it is to be executed at the market price. Unlike a typical "sell limit order", the sell stop order is below the current market price and may be executed at a